ity of the will, was the same Bruce who was named as a beneficiary under the will, he could only be considered as an attesting witness by virtue of section 2529, which renders the devise or bequest to him void. This will could not be otherwise proved than by proof of his attestation, whether that proof came from his own lips or from other witnesses.

In our judgment the true view of the statute is that the words, "if the will may not be otherwise proved," have reference to a case where the devisee or legatee is needed as an attesting witness to make up the number required by law, in which he is made a competent attesting witness by the avoidance of his interest, and he may also be called to testify at the probate of the will. And, conversely, a will may be otherwise proved when there is an extra or superfluous attesting witness beyond the number required by the statute. 4 Va. Law Reg. 327-329; 1 Tiedeman on Real Prop. § 878; 1 Redfield on Wills, *258.

We are of opinion that there is no error in the judgment of the circuit court, which is affirmed.

Affirmed.

**Note.**

This case is commented on editorially in the February number of the "Law Register" (14 Va. Law Reg. 800).

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ROBERT PORTNER BREWING CO. *v.* SOUTHERN EXPRESS CO. *et al.*

Dec. 3, 1908.

[63 S. E. 6.]

**Intoxicating Liquors (§ 40*)—Offenses—Protection of No-License Territory—"Manufacturer"—"Such Manufacturer"—"Said Manufacturer."**—The words "manufacturer," "such manufacturer," and "said manufacturer," as used in Acts 1908, p. 281, c. 189, § 15, providing that a licensed manufacturer may sell the products of his brewing at any place within the state, except where such manufactory is situated in no-license territory, but such manufacturer may sell the product of his brewing to be delivered to a common carrier to be transferred to any place where the same may be legally sold, and the said manufacturer may sell the products of his brewing in quantities not less than one gallon at the place of manufacture, except in no-license territory, mean any manufacturer, whether located in license or no-license territory; the only difference between the two classes of manufacturers intended by the statute being that the manufacturer located in license territory can sell and deliver not less than one gallon at the place of

*For other cases see the same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

manufacture, while the manufacturer located in no-license territory can make no sale and delivery at such place.

[Ed. Note.—For other cases, see Intoxicating Liquors, Dec. Dig. § 40.*

For other definitions, see Words and Phrases, vol. 5, pp. 4346-4358.]

Appeal from State Corporation Commission.

Petition by the Robert Portner Brewing Company against the Southern Express Company and others. From an order of the State Corporation Commission, petitioner appeals. Affirmed.

*S. G. Brent, R. E. Byrd,* and *J. T. Lawless,* for appellant.

*B. F. Buchanan, W. H. Mann, Thos. W. Shelton,* and *Robertson & Wingfield,* for appellees.

BUCHANAN, J. The only question involved in this appeal is whether or not, under the act of assembly approved March 12, 1908, found in chapter 189, pp. 275, 281, 282, of the Acts of 1908, the manufacturer of malt liquors, where such manufactory is situated in "licensed" territory, has the right to sell his product, to be delivered to a common carrier to be transported to a place where it cannot be legally sold.

The State Corporation Commission, from whose order this appeal was granted, in deciding this question, delivered the following opinion, which is filed with and made a part of the record:

"The construction of the act approved March 12, 1908, known as the 'Byrd Law' (Acts 1908, p. 275), is involved, and especially that part of section 15 (page 282), which reads as follows:

" 'For the privilege of manufacturing malt liquors there shall be paid one hundred and fifty dollars, and upon payment of such specific sum the manufacturer shall have the privilege of selling the products of his brewing in quantities of two dozen pints or more at any place within the state of Virginia, except where such manufactory is situated in a no-license territory, in which case no sale shall be made and delivery had at the place of manufacture; but such manufacturer may sell the product of his brewing to be delivered to a common carrier to be transferred to any place where same may be legally sold; and the said manufacturer shall have the additional privilege of selling the products of his brewing in quantities not less than one gallon at the place of manufacture, except in no-license territory.

"It must be conceded, and the petitioner does concede, that if the manufacturer of malt liquors is located in 'no-license' territory he can only ship to places where liquor may be legally sold; but he contends that this prohibition does not apply to such a manufacturer who is located in 'license' territory.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

"It can certainly be said that there is no reason for such a discrimination between persons engaged in the same business, and if the language used is to be so construed it should be clear that it was so intended.

"When considered fairly and without reference to the rest of the statute, its meaning is not perfectly clear. It is apparent that the general purpose of the law is to restrain and regulate the sale of liquor, and in furtherance of that purpose to protect no-license territory from illegal traffic in liquor. This is evident because, while it allows the retailer to sell either spirituous or malt liquor in small quantities, and does not in terms prohibit his delivering liquor in small quantities to common carriers, it is perfectly evident that its purpose is to prevent common carriers from transporting large quantities of liquor into no-license territory.

"It will be noted that by section 5 social club licenses are prohibited in no-license territory.

"By section 7 druggists who desire to sell ardent spirits are required to take out retail liquor license, except that they may use liquor in the preparation of medicine.

"Under section 12 sample merchants can only sell to some licensed person, club, or corporation.

"Under section 14 manufacturers of wines and cider containing more than 6 per cent. of alcohol are prohibited from selling in no-license or local option territory, and may not deliver to a common carrier, except to be transported to some place where ardent spirits may be legally sold.

"Under section 15 manufacturers of alcoholic liquors, as well as distillers of fruit brandy, are only permitted to deliver their product at the house where manufactured, or to a common carrier to be transported to a place where it may be legally sold.

"The double purpose—that is, allowing liquor in small quantities to be transported by common carriers only to be delivered to consumers for private use, and at the same time discouraging illegal traffic in liquor by prohibiting the transportation of large quantities by common carriers—is, we think, also sufficiently indicated by the provision above quoted with reference to the manufacture of malt liquor.

"The first two clauses fix the amount of the license tax, and discriminate between the manufactures situated in no-license territory and the manufacturer located in license territory by providing that if located in no-license territory no sale shall be made and delivery had at the place of manufacture.

"The next clause, and the one which gives rise to this controversy, separated by semicolons from all the rest of the section, uses this language:

" 'But such manufacturer may sell the product of his brewing to be delivered to a common carrier to be transferred to any place where same may be legally sold.'

"In order to sustain the contention of the petitioner, we must limit the meaning of the words 'such manufacturer' to a manufacturer located in no-license territory, and thus make a discrimination in favor of the manufacturer located in license territory, without any reason whatever for such discrimination, and in defiance of the general policy and purpose of the statute as a whole.

"This, however, is not the only language to indicate that such a construction would be erroneous, for the next clause reads:

" 'And the said manufacturer shall have the additional privilege of selling the products of his brewing in quantities not less than one gallon at the place of manufacture, except in no-license territory.'

"Now, by every rule of reason, the words 'said manufacturer,' in the last clause, must mean the same as the words 'such manufacturer' in the clause immediately preceding, and the words 'said manufacturer' plainly and in express terms refer to both classes of manufacturers, whether located in license or in no-license territory.

"The word 'manufacturer' is used only three times in the paragraph under consideration: In the first clause as 'the manufacturer'; in the third clause as 'such manufacturer;' and in the fourth clause as 'said manufacturer'—and we conclude that they mean any licensed manufacturer of malt liquors in the state, and that the only difference between the two classes of manufacturers intended by the statute is that the manufacturer located in license territory can sell and deliver not less than one gallon at the place of manufacture, while the manufacturer located in no-license territory can make no sale and delivery at the place of manufacture. We believe that this construction effectuates the apparent purpose of the Legislature, and is in accordance with the avowed policy of the state to protect no-license territory from illegal traffic in liquor by discouraging its transportation in large quantities by the common carriers into such territory for such illegal sale.

"Under this construction the private consumer living in no-license territory may buy in small quantities for personal use, while those who are engaged in the illegal sale of liquor cannot buy in large quantities from the manufacturers or wholesale dealers and use the common carriers as their conscious or unconscious aiders and abettors in their violations of the law."

We are of opinion that the conclusion reached by the Corpora-

tion Commission as to the proper construction of the statute in question is clearly right; and, as the reasons given in its opinion for reaching its conclusion are in accord with our views and are satisfactorily expressed, we adopt its opinion as our own, and will affirm the order appealed from.

Affirmed.

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CONEK *et al. v.* SKEEN, Circuit Judge.

Dec. 3, 1908.

[63 S. E. 11.]

**1. Statutes (§ 15*)—Enactment—Requisites—Emergency Cause.**—Const. 1902, § 50 (Code 1904, p. ccxx), requires that every bill shall be read at length on three different calendar days in each house, but that this requirement may be dispensed with "in any case of emergency by a vote of four-fifths of the members voting in each house." Section 53 (Code 1904, p. ccxxi), provides that "no law except a general appropriation law shall take effect until * * * 90 days after * * * the session of the General Assembly at which it is enacted, unless, in case of an emergency (which emergency shall be expressed in the body of the bill), the General Assembly shall otherwise direct by a vote of four-fifths of the members voting in each house." Acts 1908, p. 594, c. 336, approved March 14th, providing for submitting the question of the removal of the courthouse of any county to popular vote, and if removal is voted authorizing the acquisition of land and the erection of buildings, did not contain an emergency clause in the body of the bill, and in its passage the readings required by section 50 of the Constitution were dispensed with by each house. Held, that the bill was not unconstitutional for failure to incorporate in it an emergency clause, as the emergency indicated in section 53 is one that affects the time when a law shall take effect, and not an emergency requiring its immediate passage.

[Ed. Note.—For other cases, see Statutes, Dec. Dig. § 15.*]

**2. Constitutional Law (§ 26*)—State Legislature—Powers.**—A state Legislature has full power to legislate on any subject, and to adopt its own rules, regulations, and methods of enacting such legislation, unless prohibited by the Constitution.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 30; Dec. Dig. § 26.*]

**3. Statutes (§ 120*)—Subjects and Titles of Acts.**—Const. 1902, § 52 (Code 1904, p. ccxxi), provides that no law shall embrace more than

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.